



Docket No.: 077698-0012

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|   |   |                           |
|---|---|---------------------------|
| In re Application of                              | : | Customer Number: 20277    |
| James H. MCLAUGHLIN                               | : | Confirmation Number: 1702 |
| Application No.: 09/964,143                       | : | Group Art Unit: 1617      |
| Filed: September 25, 2001                         | : | Examiner: Wang, Shengjun  |
| For: EMOLLIENT SKIN CONDITIONING CREAM AND METHOD | : |                           |

**DECLARATION BY LAUREN TRAHAN**  
**UNDER 37 C.F.R. § 1.132**

I, LAUREN TRAHAN, declare and say as follows:

1. I am employed by the assignee of the present application, Crabtree & Evelyn, as a formulation chemist.

2. I am a person skilled in the cosmetic chemistry arts. I am an active member of the Society of Cosmetic Chemists and past chairperson of the Mid-Atlantic Chapter of the Society of Cosmetic Chemistry. I graduated Cum Laude from Rensselaer Polytechnic Institute in May, 2000 with a Bachelor of Science degree in Chemical Engineering. From May 2000 to June 2001, I was a Scientist/Engineer for Procter & Gamble under the "Cover Girl" brand. From June 2001 to June 2005, I was a Senior Formulation Engineer supervising the research and development lab for C-Care, LLC. From June 2005 to September 2006, I was Director of Research and Development for JONATHAN|product, a hair care product line for celebrity artist, Jonathan Antin. From September 2006, I have been employed by Crabtree & Evelyn as a formulation chemist.

3. I have read and understood the Examiner's rejection dated June 29, 2007 rejecting the claims of the application over, *inter alia*, Zabotto et al. and Barker et al.

4. I developed and organized a test and test panel to evaluate and compare the products covered by the claims in the present application to the Barker products.

5. The test panel comprised 30 women. None of the panelists had any affiliation with Crabtree & Evelyn. Each of the panelists evaluated five hand-cleansing products.

6. The products evaluated are identified as by name and acronym as follows:

EP: Crabtree & Evelyn product called LaSource Hand recovery comprising the following:

| <b>Ingredient</b>                  | <b>Weight Percent</b> |
|------------------------------------|-----------------------|
| Macadamia Ternifolia Seed Oil      | 35.06%                |
| Stearic Acid                       | 0.552%                |
| Butyrospermum Parkii (Shea Butter) | 0.72%                 |
| Caprylic/Capric Triglyceride       | 0.48%                 |
| Isopropyl Myristate                | 0.96%                 |
| Dow Corning ® 345 Fluid            | 0.36%                 |
| Cetyl Alcohol                      | 0.24%                 |
| Emulsifying Wax N.F.               | 0.96%                 |
| Sucrose Distearate                 | 0.24%                 |
| Incroquat Behenyl TMS              | 0.48%                 |
| Tauranol WSP                       | 0.95%                 |
| Potassium Stearate                 | 0.125%                |
| USP Colloidal Oatmeal              | 0.99%                 |
| Calcium Stearate                   | 18.80%                |
| Maltodextrin                       | 12.20%                |
| Deionized Water                    | 0.80%                 |
| Phenonip                           | 1.00%                 |
| Bladderwrack Extract               | 0.033%                |
| Algae Extract                      | 0.033%                |
| Pacific Sea Kelp Extract           | 0.033%                |
| Fragrance                          | 1.50%                 |
| Sodium Chloride                    | 23.49%                |

NT: Formulation EP as detailed above, omitting the surfactant, Tauranol WSP.

PC: Example 1 from Barker et al consisting of 40% petrolatum, 40% corn oil and 20% salt.

TE: P&G Olay Total Effects Age Defying Cleansing Cloths, a product purchased commercially which is covered by examples 1-5 of McAtee patent (U.S. Patent No. 6,153,208). The composition is as follows:

Petrolatum, PEG 100, Decyl Glucoside, Sodium Lauroyl Sarcosinate, Cocamidopropyl Hydroxysultaine, Cyclodextrin, Butylene Glycol, PEG 14M, Niacinamide, Panthenol (Provitamin B5), Tocopheryl Acetate (Vitamin E), Ascorbyl Glucoside, Salicylic Acid (Beta Hydroxy), Perfume (Fragrance), Polyquaternium 10, Phenoxyethanol, Benzyl Alcohol, Hamamelis Virginiana Extract (Witch Hazel), Propylparaben, Disodium EDTA, Sodium MA/Diisobutylene Copolymer, Silica, BHT, Sodium Laurate

MM: One Minute Manicure product of Mykytyn Enterprises, Inc - a product that is a salt scrub for hands to serve as a benchmark for this category. The composition is listed below:

Sea Salts, Dead Sea Salts, Sodium Sesquicarbonate, Magnesium Sulfate, Oils of Walnut, Grapeseed, Avocado, Apricot, Jojoba, Vitamin E, Essential Oils of: Peppermint, Orange, Lemon, Rosemary, Spearmint, Ruby Grapefruit

7. The original intention was to test products from both Barker et al and Zabotto et al. However, I had trouble sourcing many of the ingredients as set forth in the examples of Zabotto. Specifically, oily egg yolk extract containing egg lecithin as specified in Example 1, and polyglycerol alkylether obtained by the condensation of 7 moles of glycidol on a C18 2-diol as called for in Examples 2 to 4. As an alternative, I chose to test the Total Effects Age Defying Cleansing Cloths as an example of McAtee et al. And, I chose to test One Minute Manicure, which is also an anhydrous scrub containing a water-soluble exfoliant. It is marketed as a product to exfoliate, moisturize and nourish nails and skin, and is considered a benchmark for products developed to improve the condition of hands.

8. Each of the panelists was given 15 grams of product EP, 15 grams of product NT, 15 grams of product PC, 15 grams of product MM, 1 bag containing a single towelette of product TE with separate instructions included in the bag. The instructions for using product TE are attached as Exhibit A.

9. Each of the panelists was given five Questionnaires, one for each product to be evaluated. The Questionnaire is attached as Exhibit B.

10. Each panelist was instructed to use each product once following the procedure set forth below for each product and to complete one Questionnaire per product:

- (a) Apply the test product to dry hands, i.e. do not moisten hands with water.
- (b) Gently massage hands (front and back) for 15-20 seconds.
- (c) Rinse hands lightly with warm water (no soap or cleanser) and pat dry.
- (d) After rinsing, evaluate the product by completing the questionnaire identifying the product.

11. Each response to a question was assigned a value as set forth below:

Strongly agree = 100%  
Somewhat agree = 75%  
Neither agree nor disagree = 50%  
Somewhat disagree = 25%  
Strongly disagree = 0%

12. The mean or average of all responses to each question was calculated and the difference between the means was compared using a paired t-test. The paired t-test was used since the data was collected on the same population. Each panelist tested all five products. The paired t-test compares the differences in test results for each test product. In each case, the test results for each product were compared against product EP, the product that is covered by the McLaughlin application. In each case where there was a difference between the products tested, a confidence interval is listed, or the probability that the results are accurate. For example, in

Exhibit P, more panelists agreed that they would definitely purchase product EP versus the other four products tested. The results were true with 95% confidence, meaning there is a 5% chance that a panelist would definitely purchase another product versus product EP.

13. The results are summarized in attached Exhibits C to P. There was no data for Questions 6 and 7 of the Questionnaire (Exhibit B) because not enough of the panelists disagreed with Question 5 to compare the results.

14. Overall, the results of the panel testing show that the product EP defined by the claimed subject matter is significantly better than products PC and MM. See Exhibits C, E, F, G, I, K, O and P. In particular, the panelist agreed that the EP product felt better than products PC and MM while applying the product (Exhibit C); it rinsed away better than products PC and MM (Exhibit E); product EP had a better feel that the hands were clean after rinsing (Exhibit F); after rinsing and using product EP, the panelists were in substantial agreement that product EP was significantly different from Barker product PC leaving hands feeling good with not unpleasant residue (Exhibit G); the panelists agreed that product EP left skin conditioned without feeling abraded more so than products PC, MM and TE (Exhibits I and K); and overall, product EP was better than the product the panelists currently used and that they would purchase product EP over products PC, NT, MM and TE (Exhibits O and P).

15. Exhibit D shows that product EP had significantly less oily and greasy feel than products PC and MM as well as the EP product without the surfactant. The panel test results demonstrate that the product EP within the claimed composition does not leave a greasy after-feel when the composition is applied to and rinsed from skin with water as required by the claims in the present application.

16. Exhibit N shows that product EP provided a smoother and softer feel than all other products tested after rinsing. Although product TE fared better as shown in Exhibits C, D and E, the product was not a cream or gel, but a composition impregnated in a towelette such that the panelist would feel the towel more than the composition and water is used to apply the product. It is not applied in a cream or gel form. The results in Exhibit N demonstrate that using a surface active agent that forms a stable composition that effectively leaves a thin-film of the emollient material on the skin, effectively softens and smoothes the skin when the composition is removed from the skin with water and dried.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 12/28/2007

  
Lauren Trahan

# Exhibit A

#### INSTRUCTIONS FOR PRODUCT TE:

1. Wet with water.
2. Rub to lather.
3. Cleanse using both sides: textured side to exfoliate, smooth side for delicate areas around eyes.
4. Rinse. For best results, use the smooth side to seal in moisture.
5. Throw away (do not flush).



# Exhibit B

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Product Code: \_\_\_\_\_

Directions: Please apply the test product to your dry hands (do not moisten with water). Gently massage into your hands, front and back, for 15 to 20 seconds. Rinse lightly with warm water (no soap or cleanser) and pat dry.

Please circle the response which best describes how well you agree to each of the following statements.

1. I like the way the product feels while applying it.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

2. The product feels too oily/greasy while applying it.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

3. The product rinses away easily.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

4. After rinsing and using this product, my hands feel clean.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

5. After rinsing and using this product, my hands feel good with no unpleasant residue.

- a. Agree
- b. Disagree

If you disagreed with question 5, please answer questions 6 and 7. Otherwise, skip to question 8.

6. After rinsing and using this product, my hands have a tacky after feel.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

7. After rinsing and using this product, my hands have a greasy after feel.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

8. After rinsing and using this product, my hands do not feel stripped.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

9. After rinsing and using this product, my skin feels conditioned without feeling abraded.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

10. After rinsing the product, my hands feel hydrated/moisturized.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

11. After using this product, my hands feel conditioned.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

12. After using this product, my hands feel softer.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

13. After using this product, my hands feel smoother.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

14. After using this product, my hands feel immediately smoother and softer.

|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

15. Overall, I feel this product is better than my current hand product:

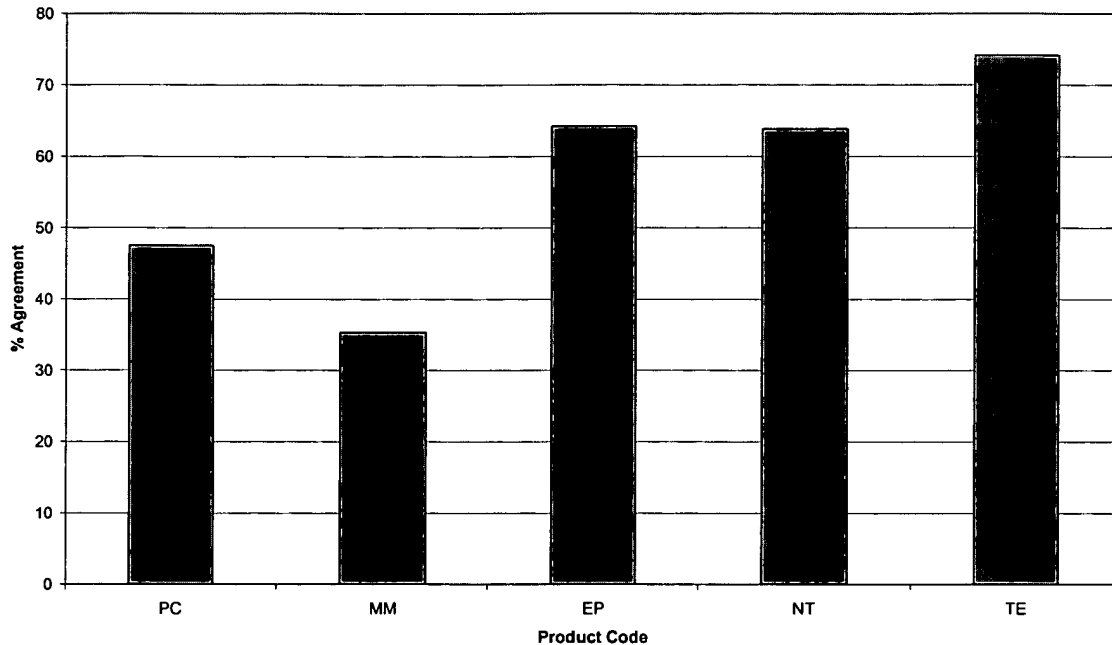
|                   |                   |                               |                      |                      |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|
| Strongly<br>Agree | Somewhat<br>Agree | Neither Agree<br>Nor Disagree | Somewhat<br>Disagree | Strongly<br>Disagree |
|-------------------|-------------------|-------------------------------|----------------------|----------------------|

16. Based on your experience, which statement best describes your desire to purchase this product:

- a. Definitely would buy
- b. Probably would buy
- c. May or may not buy
- d. Probably would not buy
- e. Definitely would not buy

# Exhibit C

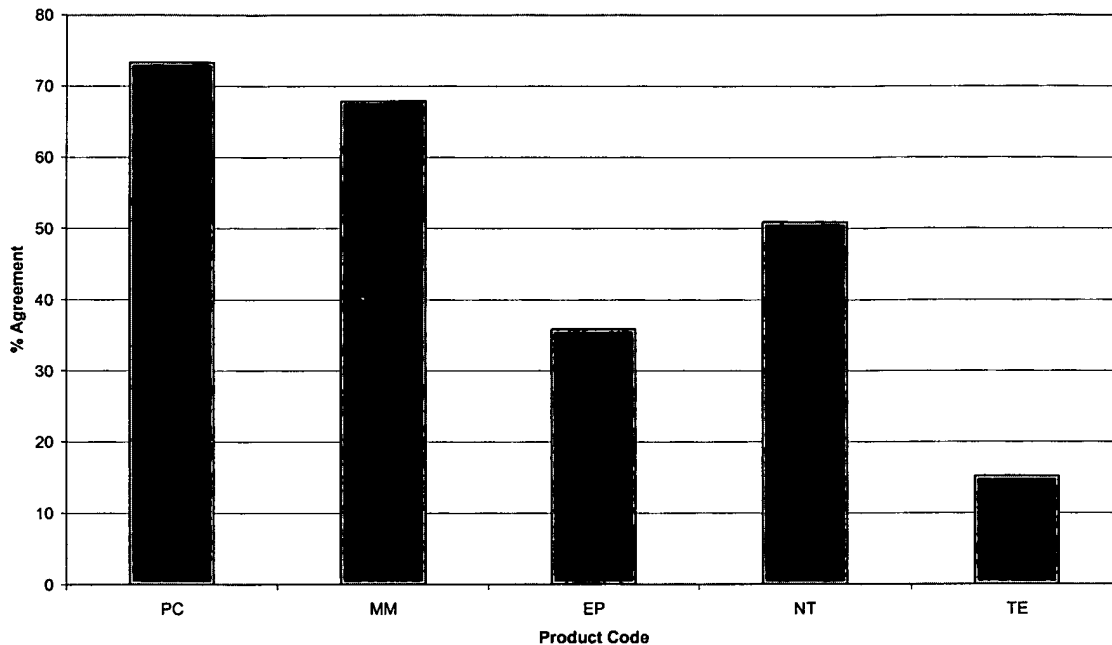
**Overall Product Feel During Application**  
Question 1: I like the way the product feels while applying it.



The graph summarizes the responses to Question 1 on the questionnaire. The results show that the panelists preferred the feel of Crabtree & Evelyn product EP over the Barker product PC and the One Minute Manicure product MM. Using a paired t-test, the mean for product EP is significantly different than products PC and MM, with a 95% confidence interval. The data further shows that the panelists judged Crabtree & Evelyn product NT had a similar feel when compared to product EP. The NT product is the EP product without the surfactant. The panel did like the feel of the Proctor and Gamble product (TE) better than the EP and NT products, but product TE is completely different product from products EP and NT. Product TE is a towelette while all of the other products tested are in the form of a cream or gel.

# Exhibit D

**Product Feel During Application**  
Question 2: The product feels to oily/greasy while applying it.

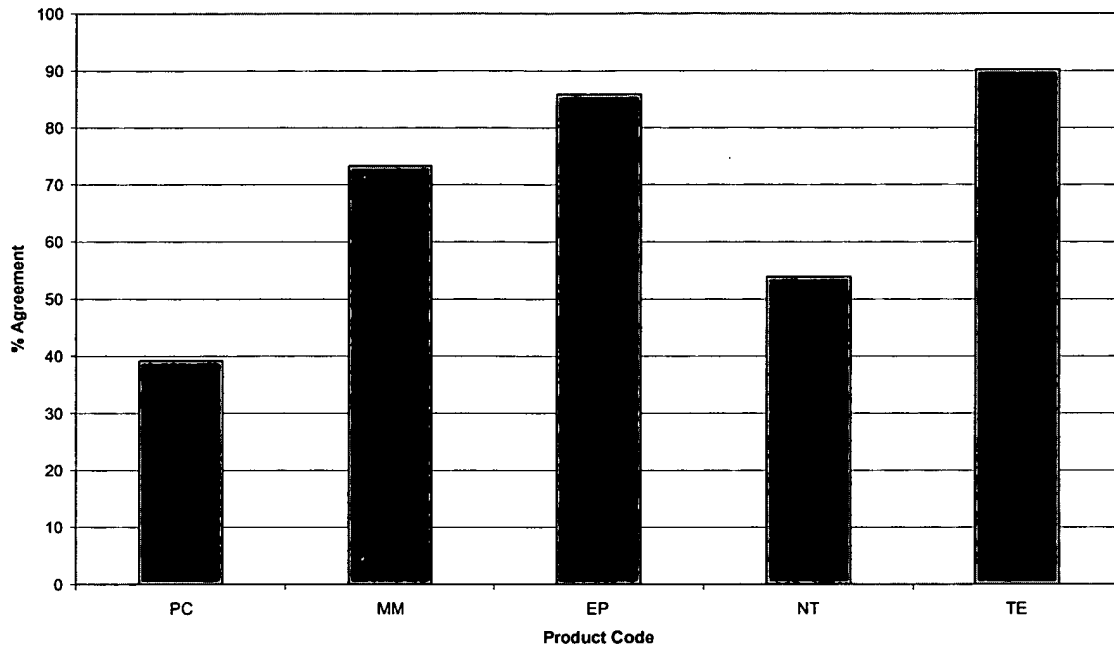


The graph summarizes the responses to Question 2 on the questionnaire. The results show that the Crabtree & Evelyn products EP and NT do not have an oily or greasy feel while applying the product as compared to products PC and MM. The results demonstrate that product EP has significantly less oily/greasy than product NT. Using a paired t-test, the mean for product EP is significantly different than products PC, NT and MM, with a 95% confidence interval. The panelists found that product TE had a less oily feel. However, this result is due to the fact that the product TE was impregnated into a towelette and the panelist would feel the towelette more than the product itself.

# Exhibit E



**Product Rinse Off**  
Question 3: The product rinses away easily

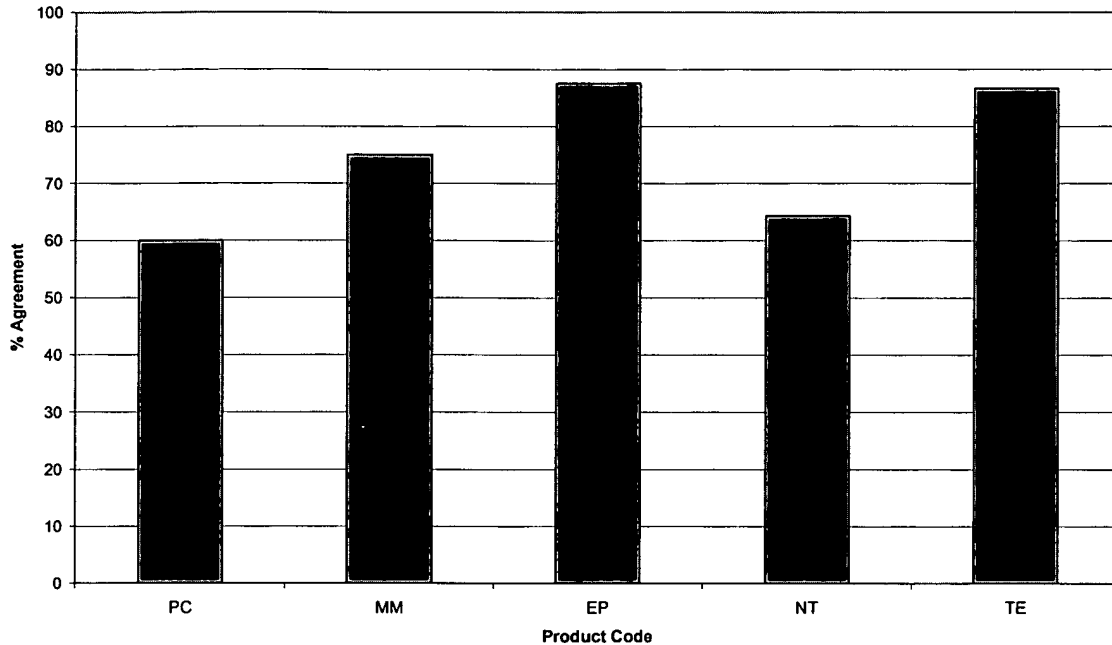


The graph summarizes the responses to Question 3 on the questionnaire. The results show that the panelists found that the Crabtree & Evelyn product EP rinses away more easily than products PC, MM and NT. Using a paired t-test, the mean for product EP is significantly different than product PC and NT, with a 95% confidence interval, and is also significantly different than product MM, with an 80% confidence interval. As for product TE, it rinses away more easily than product EP because water had to be used to apply the product whereas products EP, NT, PC and MM were applied dry state. Also, product TE has a higher surfactant load in the product.

# Exhibit F

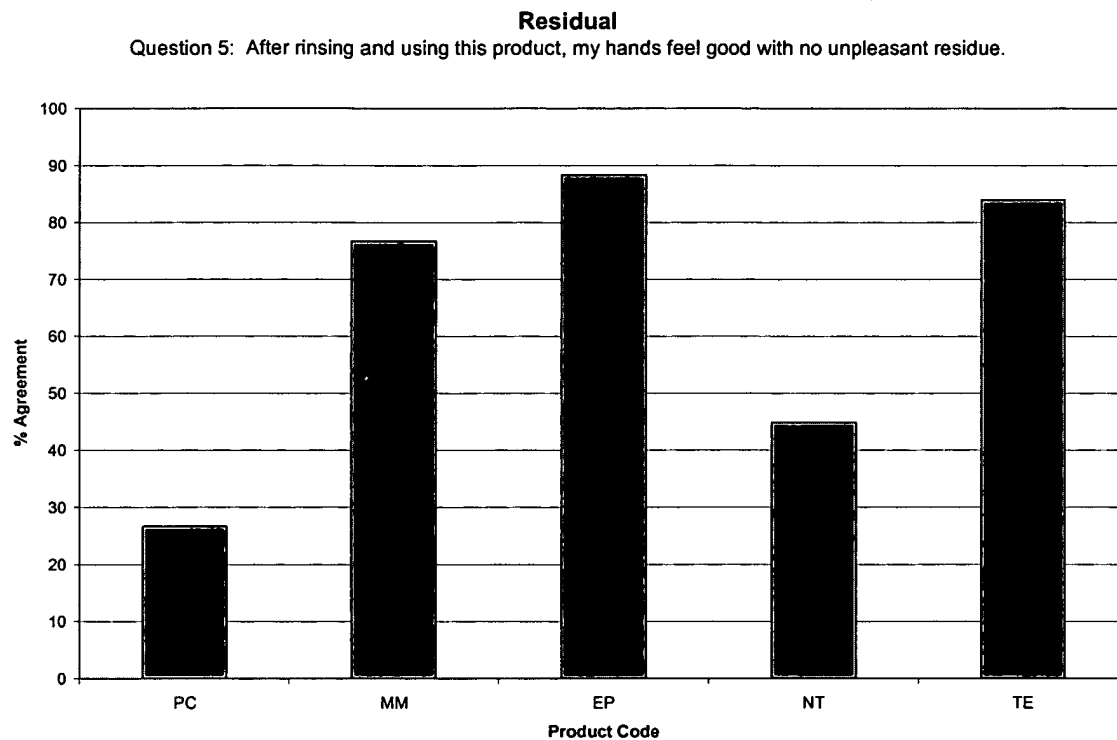
### Clean After Feel

Question 4: After rinsing and using this product, my hands feel clean.



The graph summarizes the responses to Question 4 on the questionnaire. The results show that the panelists found that Crabtree & Evelyn product EP leaves their hands cleaner than products PC, MM and NT. Using a paired t-test, the mean for product EP is significantly different than products PC, MM and NT, with a 95% confidence interval. As for product TE, this product would be expected to leave hands feeling as clean, if not cleaner than product EP, because the product is applied using water while products PC, MM, EP and NT are applied in a dry state. Also, product TE has a higher surfactant load.

# Exhibit G

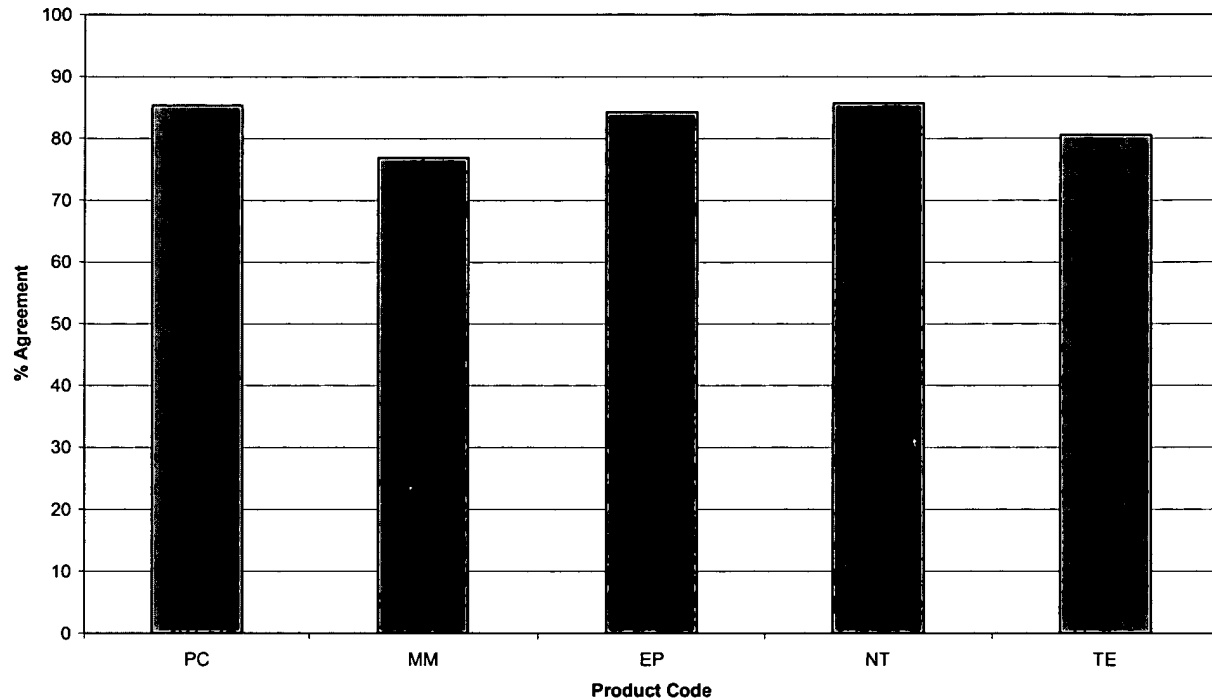


The graph summarizes the responses to Question 5 on the questionnaire. The results show that the panelists found that Crabtree & Evelyn product EP leaves their hands feeling good with no unpleasant residue more so than products PC and NT. Using a paired t-test, the mean for product EP is significantly different than products PC and NT, with a 95% confidence interval. However, using a paired t-test, the mean for product EP was not significantly different than products MM and TE with any high level of confidence on the size population (30 panelists), even though the graph shows a high level of agreement for these products.

# Exhibit H

### Stripped After Feel

Question 8: After rinsing and using this product, my hands do not feel stripped.



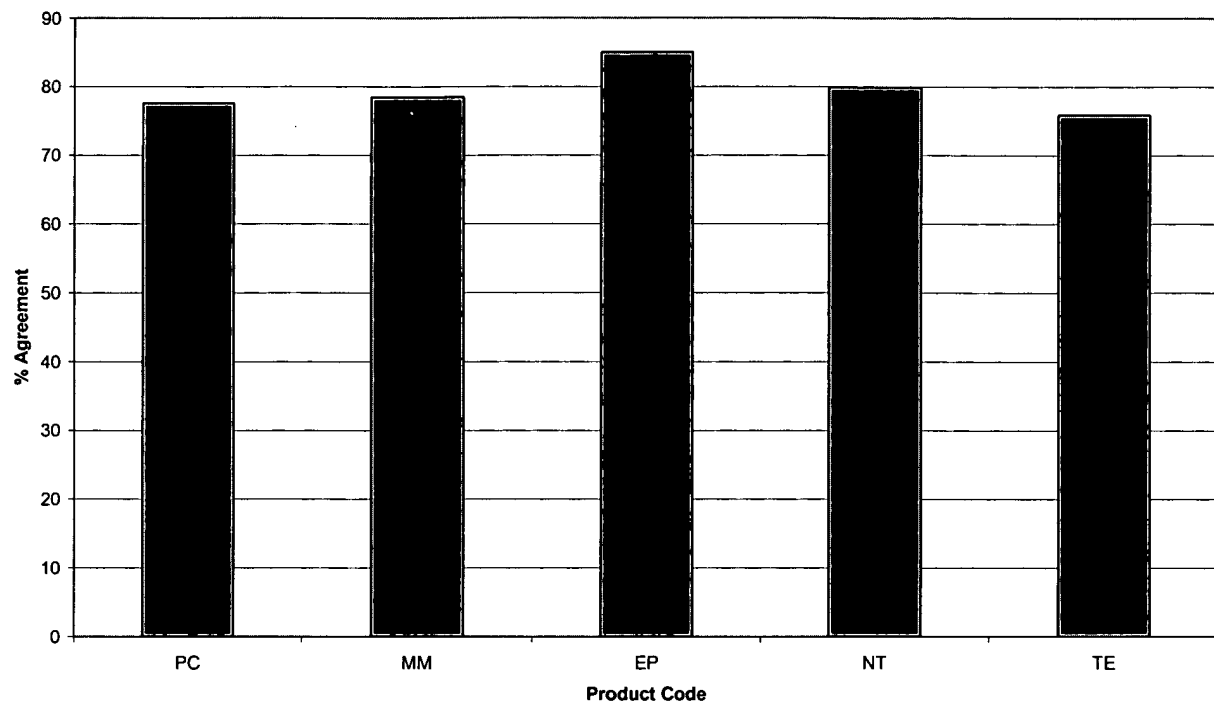
The graph summarizes the responses to Question 8 on the questionnaire. Using a paired t-test, the results show that there is no statistically significant difference between the stripped after feel the panelists experience after using products EP, NT, PC, MM or TE.

# Exhibit I



### Conditioned without Abrasion

Question 9: After rinsing and using this product, my skin feels conditioned without feeling abraded.

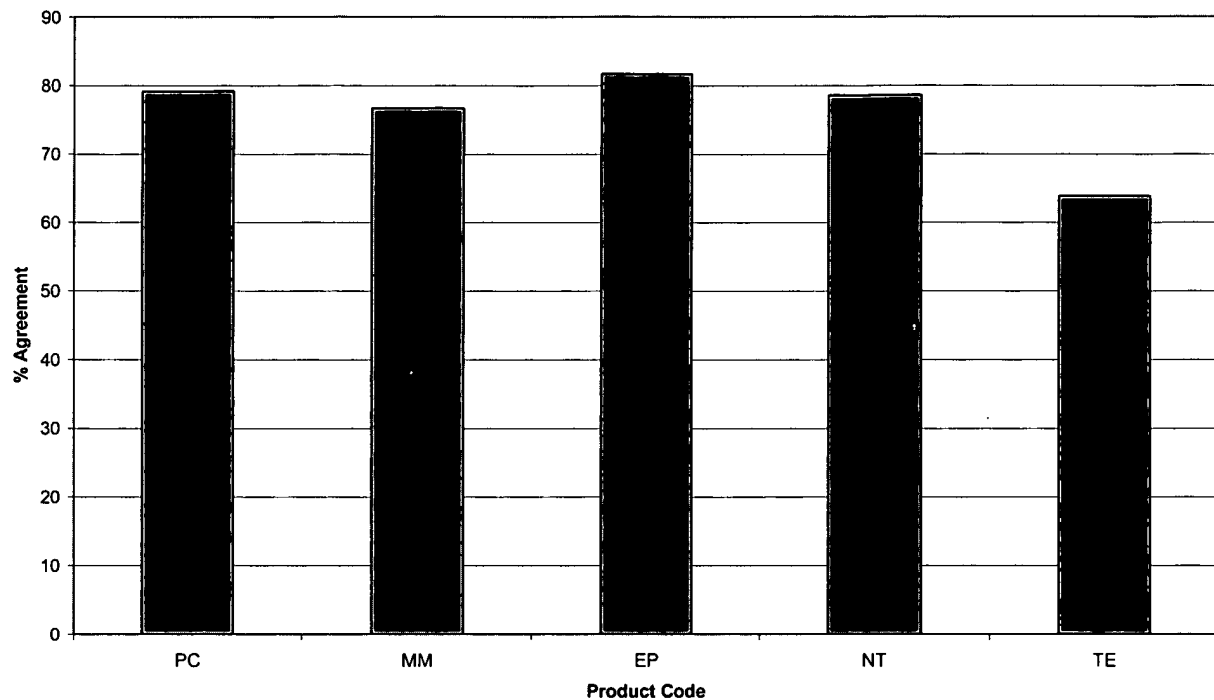


The graph summarizes the responses to Question 9 on the questionnaire. The results show that panelists agreed that product EP leaves skin conditioned without feeling abraded more so than products TE, PC and MM. Using a paired t-test, the mean for product EP is significantly different than product TE, with a 95% confidence interval while for products PC and MM, the confidence interval was 80% (still significant confidence interval). However, the paired t-test showed that there is no statistically significant difference between the conditioned after feel consumers experience after using products EP and NT. These two formulas were most closely related, the sole difference being that NT does not include any surfactant to facilitate rinse off.

# Exhibit J

### Hydration/Moisturization

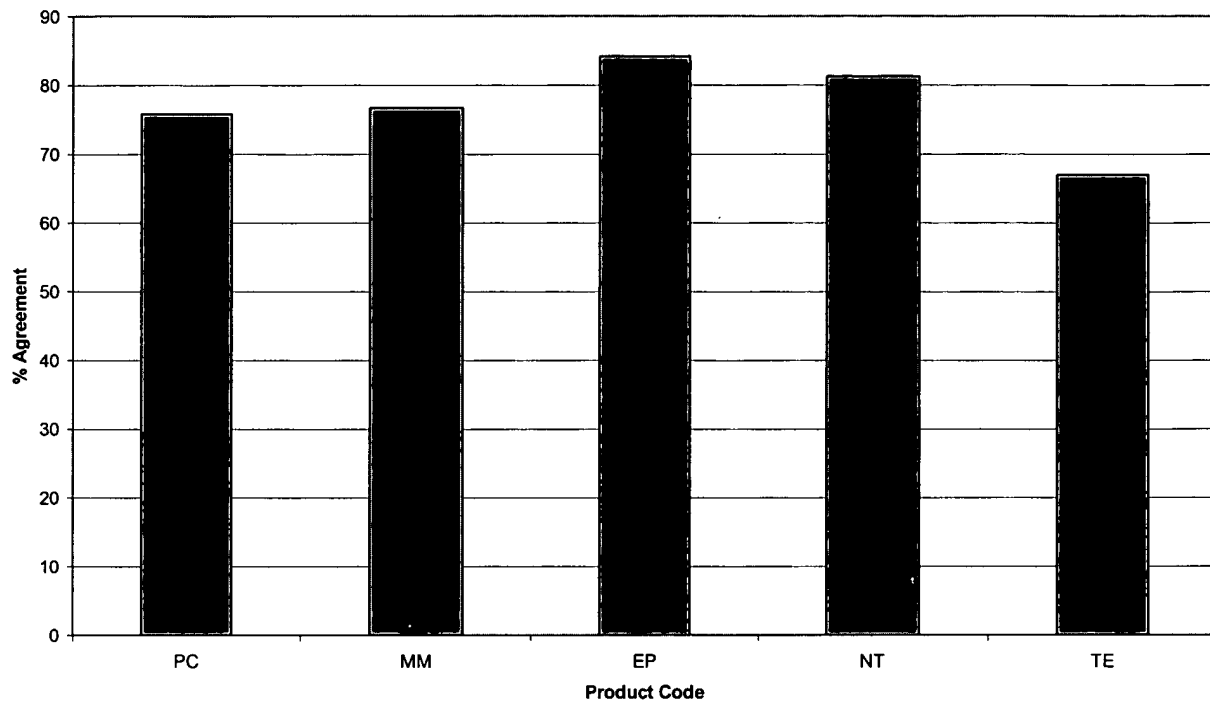
Question 10: After rinsing the product, my hands feel hydrated/moisturized.



The graph summarizes the responses to Question 10 on the questionnaire. The results show that consumers agreed that product EP leaves hands feeling hydrated/moisturized more so than product TE. Using a paired t-test, the mean for product EP is significantly different than product TE, with a 95% confidence interval. However, using a paired t-test, the results show that there is no statistically significant difference between the feeling of hydration/moisturization consumers experience after using products EP, NT, PC or MM.

# Exhibit K

**Conditioned After Feel**  
Question 11: After using this product, my hands feel conditioned.

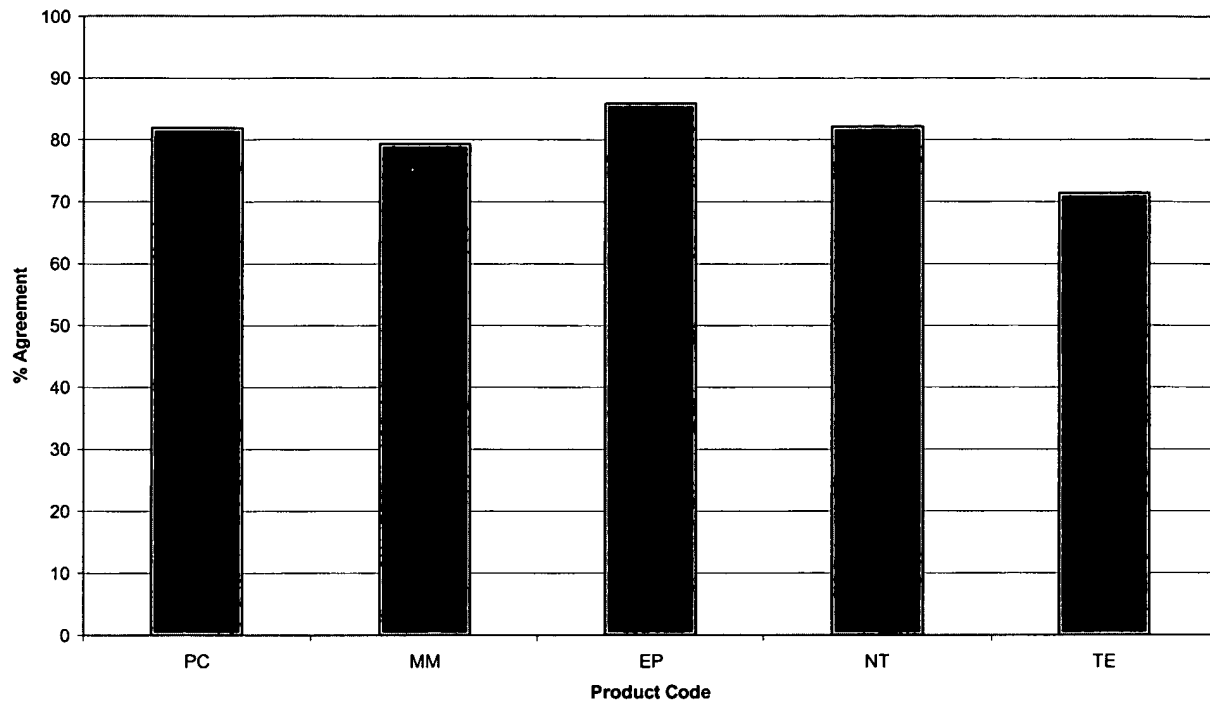


The graph summarizes the responses to Question 11 on the questionnaire. The results show that the panelists agreed that product EP leaves hands feeling conditioned more than product TE. Using a paired t-test, the mean for product EP is significantly different than product TE, with a 95% confidence interval. Further, the results show that consumers agreed that product EP leaves skin feeling conditioned more than products PC and MM. Using a paired t-test, the mean for product EP is significantly different than products PC and MM, with an 80% confidence interval. However, using a paired t-test, the results show that there is no statistically significant difference between the conditioned after feel consumers experience after using products EP and NT. As previously noted, these two formulas were most closely related, the sole difference being that NT does not include any surfactant.

# Exhibit L

### Softer After Feel

Question 12: After using this product, my hands feel softer.



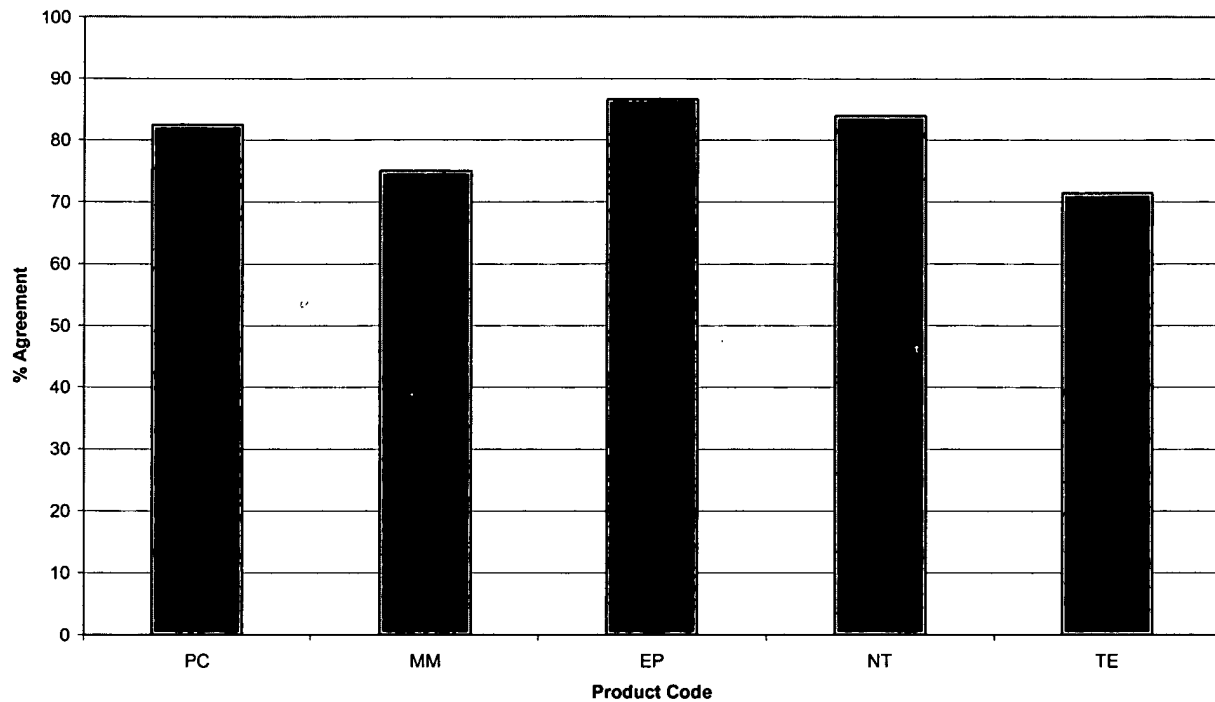
The graph summarizes the responses to Question 12 on the questionnaire. The results show that the panelists agreed that product EP leaves hands feeling softer more than product TE. Using a paired t-test, the mean for product EP is significantly different than product TE, with a 95% confidence interval. The results further show that consumers agreed that product EP leaves hands feeling softer more than product MM. Using a paired t-test, the mean for product EP is significantly different than product MM, with an 80% confidence interval. However, using a paired t-test, the results show that there is no statistically significant difference between the softer after feel consumers experience after using products EP, PC, or NT.

# Exhibit M



### Smoother After Feel

Question 13: After using this product, my hands feel smoother.

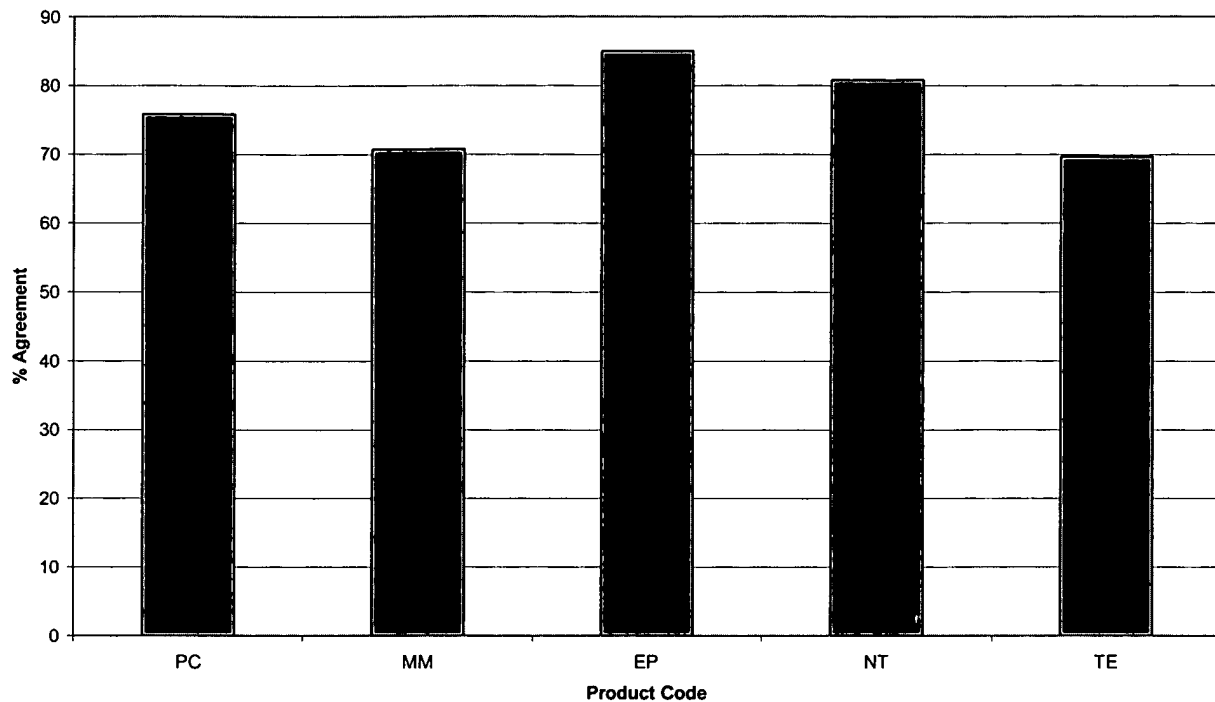


The graph summarizes the responses to Question 13 on the questionnaire. The results show that the panelists agreed that product EP leaves hands feeling smoother more than products MM and TE. Using a paired t-test, the mean for product EP is significantly different than products MM and TE, with a 95% confidence interval. However, using a paired t-test, the results show that there is no statistically significant difference between the smooth after feel consumers experience after using products EP, PC, or NT.

# Exhibit N

### Immediate After Feel

Question 14: After using this product, my hands feel immediately smoother and softer.

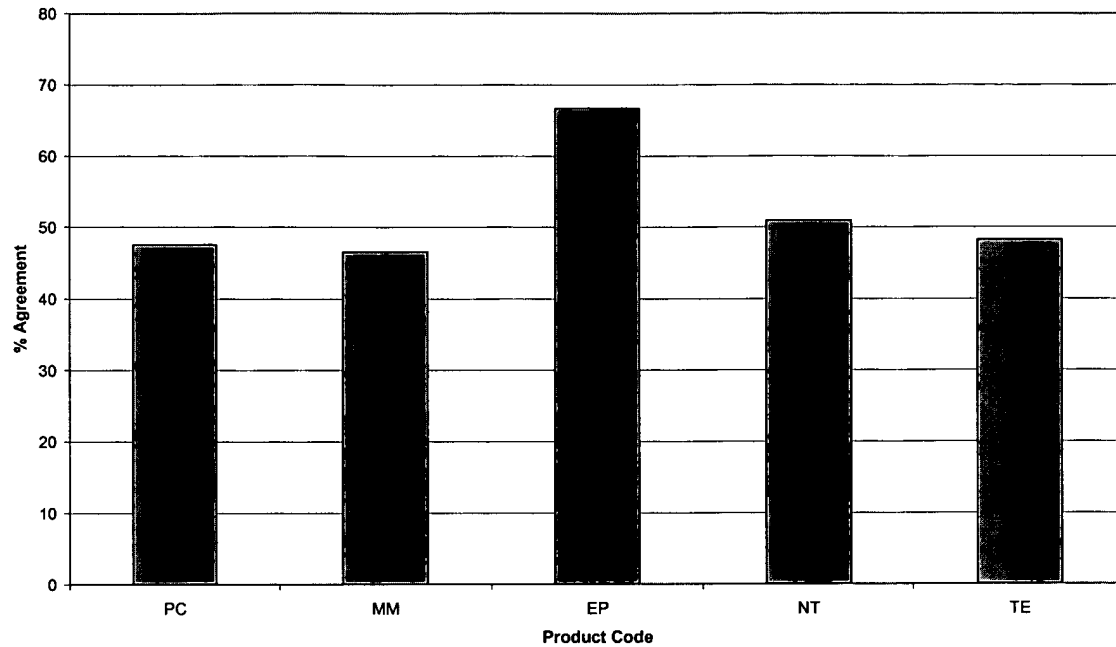


The graph summarizes the responses to Question 14 on the questionnaire. The results show that the panelists agreed that product EP leaves hands immediately feeling smoother and softer more than products MM and TE. Using a paired t-test, the mean for product EP is significantly different than products MM and TE, with a 95% confidence interval. The results further show that the panelists agreed that product EP leaves hands immediately feeling smoother and softer more than product PC. Using a paired t-test, the mean for product EP is significantly different than product PC, with an 80% confidence interval. However, using a paired t-test, the results show that there is no statistically significant difference between the immediate feeling of smoothness and softness consumers experience after using products EP and NT. As previously noted, these two formulas were most closely related, the sole difference being that NT does not include the surfactant.

# Exhibit O

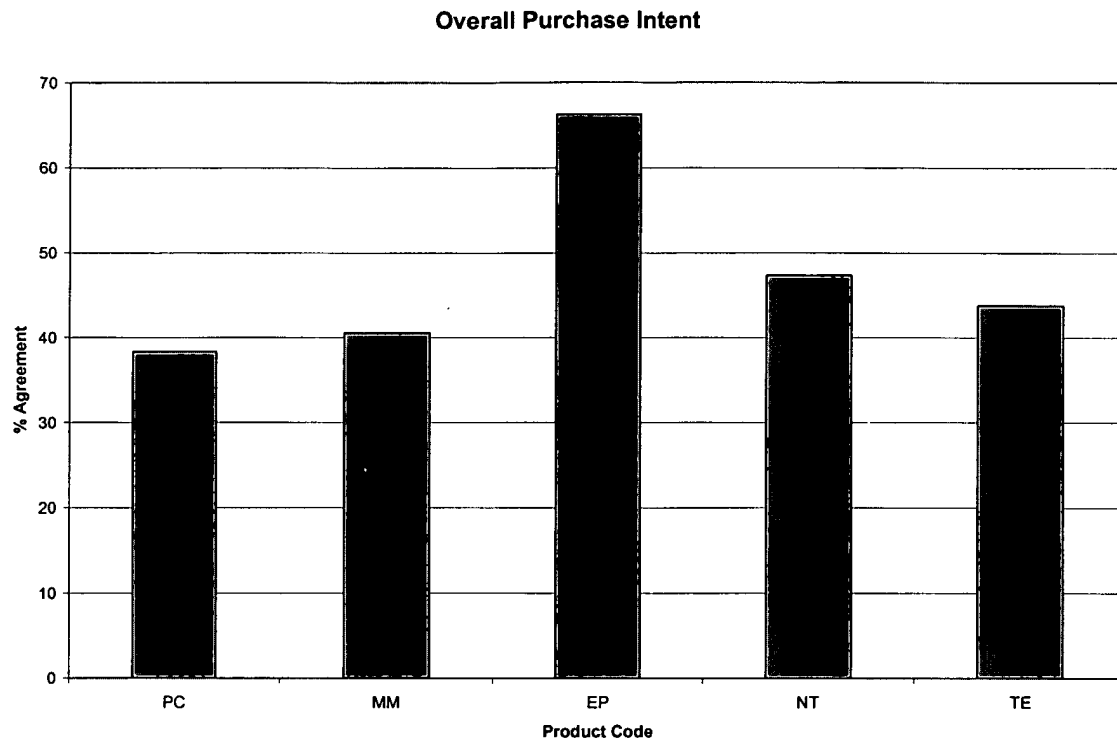
### Better than Current

Question 15: Overall, I feel this product is better than my current hand product.



The graph summarizes the responses to Question 15 on the questionnaire. The results show that consumers feel product EP is better than their current product to a greater extent than all other products tested. Using a paired t-test, the mean for product EP is significantly different than products PC, MM, NT, and TE with a 95% confidence interval.

# Exhibit P



The graph summarizes the responses to Question 16 on the questionnaire. The results show that more consumers would definitely purchase product EP than products PC, MM, NT, or TE. Using a paired t-test, the mean for product EP is significantly different than the other four products, with a 95% confidence interval.